

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

2012 JUN 7 PM 4:25

CLERK OF THE COURT

BY: K. GRESHAM

ORIGINAL

STATE OF ARIZONA,)
)
Plaintiff,)
)
)
)
vs.)
)
STEVEN CARROLL DEMOCKER,)
)
Defendant.)
)
_____)

No.
P1300CR2010-01325

BEFORE: THE HONORABLE GARY E. DONAHOE
VISITING JUDGE OF THE SUPERIOR COURT
APPEARING TELEPHONICALLY IN ROOM 302
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA
FRIDAY, JUNE 1, 2012
9:02 A.M. SESSION

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Hearing Re: Status Conference

LISA A. CHANEY, RPR, CSR, CR
Certified Reporter
Certificate No. 50801

ORIGINAL

A P P E A R A N C E S

Appearing telephonically on behalf of the Yavapai County
Attorney's Office:

JONES, SKELTON & HOCHULI, P.L.C.
By: Mr. Russell Yurk,
Attorney at Law
2901 North Central Avenue
Suite 800
Phoenix, Az 85012

Appearing telephonically on behalf of the Defendant (not
present):

Mr. Craig Williams, Attorney at Law
Mr. Greg Parzych, Attorney at Law

Also Present:

Ms. Cheryl Wagster, Division 1 Judicial
Assistant
Ms. Janice DeMocker

FRIDAY, JUNE 1, 2012
9:02 A.M. SESSION

(Appearances as heretofore noted.)

09:02AM

THE COURT: Good morning. This is
P1300CR2010-01325. It's the matter of the State of
Arizona versus Steven Carroll DeMocker and this time is
set for a Status Conference, a conference call, as a
result of the recent Court of Appeal's decision on the

09:03AM

Special Action, and perhaps I could, for the record, ask
counsel now to announce your appearances.

MR. WILLIAMS: This is Craig Williams for
Mr. DeMocker.

09:03AM

MR. PARZYCH: Judge, this is Greg Parzych
also on behalf of Mr. DeMocker.

MR. YURK: And, Your Honor, Russell Yurk on
behalf of the Yavapai County Attorney's Office.

THE COURT: Thank you.

09:03AM

And, Mr. Williams, are we waiving
Mr. DeMocker's presence today?

MR. WILLIAMS: I talked to him yesterday and
for the record I am waiving his presence.

THE COURT: Thank you.

09:03AM

Have you all talked about a new schedule for
this Evidentiary Hearing?

1 MR. PARZYCH: Judge, this is Greg Parzych,
2 we have. Once we received the decision Tuesday
3 afternoon I talked to Mr. Yurk, Mr. Williams and I
4 consulted with our expert.

09:04AM

5 From our perspective, Judge, given the
6 severity of the intrusion and the sensitivity of the
7 ex-parte documents we are going to be filing a petition
8 for a review.

09:04AM

9 Talking with Mr. Yurk we agree that at this
10 point to try to set new dates and times would not be
11 realistic given the petition that's going to be filed.

09:04AM

12 We would -- we, Mr. Williams and I, on
13 behalf of Mr. DeMocker would, once again, move to stay
14 the order of producing documents until we hear back from
15 the Supreme Court.

16 I believe in talking with Mr. Yurk he does
17 not object to that request.

18 MR. YURK: That's correct, Your Honor.

09:04AM

19 THE COURT: Well, I'm not staying it. You
20 know, I just don't see the Supreme Court getting
21 involved in this. That's my feeling is they're not
22 going to get involved in a discovery issue like this and
23 this is just going to delay the case for another two
24 months and we got to move on with this.

09:04AM

25 So unless you can get -- unless you can tell

09:05AM

1 the Supreme Court that I denied your Motion to Stay, I'm
2 ordering production of these documents by, say, next
3 Wednesday at the latest. This case is approaching four
4 years old. Mr. DeMocker has been sitting in jail for
5 four years and it's got to get resolved here.

09:05AM

6 So I'm not agreeing to any stay, except a
7 stay from the Supreme Court, great, but if I have you
8 produce documents next Wednesday, let's go ahead and set
9 a schedule because, again, I just don't think that the
10 Supreme Court is going to do anything with this.

09:05AM

11 MR. PARZYCH: Judge, a couple of things.
12 Number 1 is we don't just have -- you know, let's assume
13 that the Supreme Court does not stay the proceedings,
14 will we have a Status Conference then on Thursday to set
15 up a schedule?

09:06AM

16 THE COURT: That's what today we're going to
17 do because, again, if we wait until next Thursday, then
18 we've lost another week on the case.

09:06AM

19 MR. PARZYCH: Judge, one thing, and I've
20 talked to Mr. Yurk about this too, and I know that the
21 court's aware of it, I still have that capital case
22 before Judge O'Connor, that when you and Judge O'Connor
23 talked that capital case was bumped, that's now due to
24 set. It's now set to begin July 26th and we have final
25 pretrial conference and motions July 19th.

09:06AM

1 I've informed Judge O'Connor throughout the
2 proceedings about what's happening in this case, in
3 Mr. DeMocker's case, so I just bring that up to this
4 court as well because, once again, both of these cases
5 are going to run into each other it appears.

09:06AM

6 THE COURT: You better work with Judge
7 O'Connor on this because this case has got priority and
8 it's going to move along at a faster pace than it has.

9 I mean, once I get this hearing done, if --
10 one way or the other I'm going to set a trial date,
11 whether I disqualify the county attorney or not, or --
12 and if I don't disqualify the county attorney, the trial
13 date's going to be sooner than later.

09:07AM

14 Again, there's been too many delays in this
15 case. It's going to get tried. Mr. DeMocker has a
16 right to a speedy trial. The victims have a right to a
17 speedy trial. This has gone on too long so we're going
18 to set a schedule today and if it conflicts with your
19 other case you better get the conflict resolved with
20 O'Connor because this is not a capital case.

09:07AM

21 I'm not so sure why two attorneys are
22 involved in this case anyway, but once it became -- you
23 know, every first degree homicide case I've ever handled
24 that's not a capital case, there's only one defense
25 attorney involved, so you're going to have to resolve

09:07AM

1 any conflict.

2 So, again, assuming these documents are
3 produced, I'm going to order them produced by Wednesday
4 of next week. If you get a petition in front of the
09:08AM 5 Supreme Court, and if it's stayed, that's great, but if
6 not, we're going to proceed.

7 MR. PARZYCH: Well, Judge, I will let Judge
8 O'Connor know and, again, I've kept her informed as well
9 as you informed on both cases. So I know that we have
09:08AM 10 very active victims in the case before Judge O'Connor,
11 but I'll let Judge O'Connor know and I suspect that, as
12 like last time, Judge O'Connor may be contacting you.
13 I'll do whatever the Judges tell me to do. I'm just
14 notifying both courts.

09:08AM 15 THE COURT: Yeah, I appreciate that, and she
16 can -- she's got my phone number, e-mail, and I can't
17 remember how we resolved it the last time if it was by
18 e-mail or phone, but I'm sure that we can work it out
19 and get any conflicts resolved, but it would seem to me
09:08AM 20 that if this hearing on this motion to disqualify the
21 county attorney is three days, that we could work a
22 three day window in your -- whatever July time frame for
23 your other case. So I don't -- I suspect that we can
24 work around that.

09:09AM 25 MR. PARZYCH: And, Judge, I do too, and I've

1 notified the state in the case in Maricopa County and
2 all parties agree with that.

3 I'm just notifying both courts. Again, if
4 we get to the point where the trial conflicts, you know,
09:09AM 5 I may be in the beginning in the one before Judge
6 O'Connor by the time the other issue with regard to the
7 Evidentiary Hearing gets resolved.

8 Again, I'll keep both courts posted.

9 THE COURT: Yeah, I appreciate it. So let's
09:09AM 10 at least think about a schedule here. So if there's no
11 stay entered by Wednesday and the documents are produced
12 on Wednesday, what would -- Mr. Yurk, what's the time
13 frame that you're thinking about?

14 MR. YURK: Well, Your Honor, considering --
09:09AM 15 there are a couple of different issues involved. One,
16 obviously, we haven't seen all of the documents yet.
17 We're still not in a position to know exactly what
18 particular witnesses and what particular evidence we
19 need to put on regarding all of the -- all of the
09:10AM 20 documents.

21 There's also, you know, the potential, I'm
22 hoping, for conversations between counsel to narrow the
23 scope of the Evidentiary Hearing because I would, you
24 know, based on the discovery or the investigation that
09:10AM 25 we've done so far, there appears to be no reasonable

1 basis for an argument of prejudice for many of the
2 documents.

3 You know, we all know, I think already now,
4 what happened. We know why the documents got out and,
09:10AM 5 you know, we know that it wasn't an intentional, you
6 know, illegal, you know, grab of documents and
7 surreptitious hacking situation.

8 We know it was a Clerk of the Court, you
9 know, issue and the settings were improperly done and
09:10AM 10 documents were either pushed to or inadvertently made
11 available to the general public not just to the county
12 attorney's office and so if there's a way to narrow the
13 scope of the documents, and I'm going to have that
14 discussion with defense counsel, then I'm hopeful that
09:11AM 15 we can abbreviate the time for discovery and disclosure
16 and even -- maybe even push the hearing down to one or
17 two days instead of three, but at this point, taking it
18 as broad as scope, assuming that the defense is going to
19 maintain their position on -- that all of the documents
09:11AM 20 in the Clerk's report prejudice their client and they
21 don't limit it now to a full three day hearing with all
22 of the documents, I would say that we probably need at
23 least a week or two to do the discovery and then another
24 week or so for -- to put our disclosure statement out.

09:11AM 25 So I would probably ask for three weeks from

1 the date of disclosure, which would put our disclosure
2 statement due on the 27th of June, and then with some
3 reasonable time period for the defense to put together
4 their disclosure statement and then I would think that
09:12AM 5 we could have a hearing in late July.

6 I will notify the Court, I've already
7 notified Mr. Parzych, that Ms. Staton is in pretrial and
8 trial July 9 through July 20. So we would have to set a
9 hearing following July 20 that fits in our schedules.

09:12AM 10 THE COURT: Well, let me back up. If you do
11 your -- get the documents -- I've got to get on a
12 calendar here. If you get your documents here -- excuse
13 me, if you got -- let me -- excuse me, if you got the
14 documents by June 6th, you think you'd need until the
09:13AM 15 27th to review them and for a disclosure statement?

16 MR. YURK: Yes.

17 THE COURT: And then would there be some
18 time built in to do interviews or what -- how do you see
19 this playing out here?

09:13AM 20 MR. YURK: I mean, I think at that point we
21 -- the universe of people who are going to be at issue
22 is pretty much known already.

23 I would suggest that the defense can, you
24 know, conduct interviews during that time and do
09:13AM 25 whatever discovery they want during that time. I don't

1 see any reason why they can't and so I would think that,
2 you know, they could be preparing a disclosure statement
3 already.

09:13AM 4 I would suggest probably, you know, a two
5 week period or so after the 27th until like July 11th or
6 13th or somewhere around there for a due date for the
7 defense disclosure statement and then I know that the
8 court had originally requested that we all prepare and
9 submit proposed findings of fact and conclusions of law
09:14AM 10 in advance of the hearing.

11 So if the defense would have a disclosure
12 statement ready by July 11th or so, which is the two
13 week window, then maybe all of us could submit proposed
14 findings of fact and conclusions of law maybe by July
09:14AM 15 25th which is two weeks after that.

16 And, once again, during that time period
17 Ms. Staton is in trial, but I'm not so I should be able
18 to work on those comprehensive proposed findings and
19 conclusions and maybe we can submit those July 25th and
09:14AM 20 hold a hearing, you know, the first couple of days of
21 the following week which would be maybe, you know, July
22 30, July 31, August 1, somewhere in there, and get this
23 scheduled.

24 And like I said, hopefully, we'll be able to
09:14AM 25 have some productive conversation among counsel that

1 might be able to abbreviate the hearing from three days
2 and move it down to one or two days, but I don't know
3 the prospects for that yet.

4 MR. WILLIAMS: This is Craig Williams.

09:15AM 5 THE COURT: Yeah, go ahead.

6 MR. WILLIAMS: First, I don't want to let it
7 go unsaid that we don't agree with Mr. Yurk's position
8 about the amount of witnesses that we've got to call or
9 the scope of the hearing, but I respect his position on
10 what he said.

09:15AM

11 I would ask for the deadline to mirror what
12 he said except that I'd ask for the deadline -- instead
13 of the 11th of July to be the 13th of July because July
14 4th is in the middle of the week before that, and I'd
15 just ask for those two extra days, and then I agree with
16 him that the Evidentiary Hearing should go the 30th,
17 31st, and 1st.

09:15AM

18 THE COURT: August 1st. I'm just making
19 some notes here. So the state's disclosure would be due
20 June 27th and the defense disclosure would be due July
21 13th, if I'm understanding this, and the proposed
22 findings of fact and conclusions of law would be July
23 25, and then set a hearing date for July 30, 31 and
24 August 1st, assuming that we need those three days, and
25 then during that whole period of time, at least up until

09:16AM

1 whatever you agree, you can do all of your interviews.

2 Is that what you're -- is that the proposal?

3 MR. WILLIAMS: I would agree with that
4 proposal, Judge.

09:16AM 5 THE COURT: Let me ask, Cheryl -- she's
6 sitting there -- the hearing dates that they proposed,
7 is the court available then?

8 THE JUDICIAL ASSISTANT: The only thing I
9 would change, Judge, is I would make the three day
09:16AM 10 hearing Wednesday, Thursday and Friday, August 1st, 2nd
11 and 3rd just for the convenience of having the courtroom
12 available and staff.

13 THE COURT: Let me ask, counsel, are you --
14 is everybody around on the 1st, 2nd and 3rd?

09:17AM 15 MR. WILLIAMS: I have no objection to that,
16 Judge.

17 MR. PARZYCH: And, Judge, this is Craig
18 Parzych. Again, that will depend on what Judge O'Connor
19 tells me.

09:17AM 20 THE COURT: Okay.

21 How about, Mr. Yurk, do you know what Ms. --
22 your -- well, I assume you know what your schedule is.
23 How about Ms. Staton's?

24 MR. YURK: Yeah, I can tell you, Your Honor,
09:17AM 25 that I am available August 1 through 3. I do not know

09:17AM

1 off the top of -- I do not have the calendar for her for
2 those days in front of me. I'm checking with her right
3 now. She's out of the office, but I think it's okay if
4 we tentatively set those and if there's a -- if there's
5 even -- if there's an issue with either Mr. Parzych and
6 his case, or if something unforeseen happens on our end
7 that, you know, maybe, we can -- you know, it would be
8 unfortunate, but talk about a reschedule at that time
9 because I can't guarantee that Ms. Staton is available

09:18AM

10 those dates.

11 THE COURT: Okay. Well, let's --

12 (Whereupon, Ms. Janice DeMocker enters the
13 room.)

09:18AM

14 THE COURT: Well, let's set these dates and
15 then if somebody has a conflict they can let me know.

16 So I'm going to order, again, production of
17 the documents to have Mr. Parzych deliver those to
18 Mr. Yurk and Ms. Staton's office -- got to look at the
19 dates -- by no later than July, I'm sorry, June 6th,
20 close of business.

09:18AM

21 And it's further ordered that the state's
22 disclosure is due June 27.

23 Further ordered that the defendant's
24 disclosure statements due July 13.

09:19AM

25 Further ordered that both parties will

09:19AM

1 submit proposed findings of fact and conclusions of law
2 to the court no later than July 25, and I would request
3 that those be in electronic form and word format and
4 we're going to set the hearing date for August 1st, 2nd
5 and 3rd, and let's start the 1st at, say, 10 a.m. and
6 then perhaps on the 2nd and 3rd at 9 a.m., and then by
7 agreement of counsel, interviews of potential witnesses
8 can occur beginning any time after June 6th and continue
9 until July 13. That gives you, what, five or six weeks
10 to do all of the interviews.

09:20AM

11 Okay. And then, Mr. Parzych, did you say
12 that you've already filed a petition for review or
13 you're going to file one?

09:20AM

14 MR. PARZYCH: Judge, my understanding --
15 well, now, obviously, we hope to have that thing filed
16 by hopefully -- we've been working on -- I know that
17 Mr. Williams has been working on that. Obviously, this
18 will speed us up.

09:20AM

19 THE COURT: Yeah, and I appreciate everybody
20 sending me e-mails with court orders since I'm not on a
21 regular mailing list. So if you'd continue to do that,
22 I'd appreciate it, but if there's a stay ordered --
23 entered by the Supreme Court I'd appreciate it if you'd
24 just e-mail that to me and then I could do a minute
25 entry that vacates everything and we'll just wait and

09:21AM

1 see what happens, but I've already given you my estimate
2 about what's going to happen, but your guess is as good
3 as mine.

09:21AM 4 Okay. Well, let me do this too, if we're
5 going to do the hearing date on -- start the 1st, what
6 I'd like you to do is submit to the Clerk of the Court,
7 to the Division Clerk of the Court, no later than July
8 30th all of the exhibits that you're going to use so
9 that those can be marked in advance.

09:21AM 10 MR. YURK: Your Honor, Russell Yurk, and
11 that makes perfect sense to me. The one question that I
12 wanted -- that I have is regarding the disclosure
13 statements, not the deadlines, but the content and the
14 procedure for them.

09:22AM 15 The first is my understanding from the
16 original court order when we set deadlines the first
17 time way back when was that the disclosure statements
18 were suppose to identify from the Yavapai County
19 Attorney's Office and what documents according to the
09:22AM 20 Clerk's report had been disclosed, who saw them, what
21 they did with them, and basically kind of disclose
22 information regarding the factors that the -- the Warner
23 Factors that the Court of Appeals had set out.

09:22AM 24 I didn't take the court's original
25 scheduling order as basically making it a list of

1 witnesses and exhibits that we would use at the hearing
2 and I wanted to kind of make sure that my reading of
3 that was correct, because if it is a list of witnesses
4 and exhibits, we can do that. I just need to be clear
09:22AM 5 as to what we're expected to put into the disclosure
6 statement as to content.

7 THE COURT: I'd like the Warner Factors
8 addressed, but also I'm assuming that would encompass
9 your proposed witnesses and I would assume that in your
09:23AM 10 disclosure statement that you would mark -- highlight or
11 say this person is going to appear at the Evidentiary
12 Hearing or something, but --

13 MR. YURK: Okay.

14 THE COURT: -- yeah, it needs to disclose
09:23AM 15 who's going to appear so that Mr. Williams and
16 Mr. Parzych have an idea, have some idea of what they
17 already know, who they want interviewed --

18 MR. YURK: Okay.

19 THE COURT: -- over the course of this next
09:23AM 20 month or so.

21 I saw in the response to the special or the
22 reply I guess to the Special Action that Mr. Williams
23 and Mr. Parzych had listed a number of people in there.
24 So I'm assuming they know about some of these people and
09:24AM 25 have the information about them.

1 So, yeah, I'd like the Warner Factors
2 addressed, but also let everybody know who the witnesses
3 are going to be and what exhibits you intend to use.

4 MR. YURK: Okay. And that makes perfect
09:24AM 5 sense, Your Honor. We'll do that. I think what we'll
6 do is we'll probably break that up into sections. We'll
7 deal with kind of the Warner Factors in a section and
8 we'll have a section maybe on, you know, witnesses and
9 then another section maybe on exhibits, and I guess it's
09:24AM 10 kind of tentative and subject to change based on what
11 they do in their disclosure statement, but the second
12 question that I have is is the disclosure statement just
13 exchanged among parties or do you want that filed?

14 THE COURT: No, you don't need to file it.
09:24AM 15 I don't see any reason to file them just, you know, just
16 so that we're clear on the record perhaps -- well, I'm
17 thinking out loud. I'm wondering if we should --

18 MR. YURK: And the reason I brought it up,
19 Your Honor, is because a list of witnesses and exhibits
09:25AM 20 would usually be filed in many instances whereas the
21 disclosure statement of information wouldn't.

22 So it seemed to me to have information on
23 both might be worthy of filing in information that
24 wasn't kind of like a hybrid-type of a document and I
09:25AM 25 didn't know if you wanted it filed or copied to you or

1 what you wanted.

2 THE COURT: Well, I'd like it copied to me,
3 but I'm just -- and maybe Mr. Williams can chime in.
4 I'm just concerned that some of this -- some of the
09:25AM 5 information, these disclosures, kind of combined
6 disclosure statements, list of witnesses and exhibit
7 documents may contain information that shouldn't be made
8 public.

9 MR. WILLIAMS: Well, yes, Judge, that's our
09:26AM 10 central thesis, that none of this should be and so I
11 think that fashioning some kind of order that way. I
12 don't see any reason why the list of witnesses can't be
13 published, but the documents I would object to them
14 being made public.

09:26AM 15 THE COURT: Well, everybody's going to have
16 the same documents. So there's no need to file the
17 documents. I'm just assuming that in the disclosure
18 statements there's going to be some discussion about,
19 say, John Doe saw this document and the following
09:26AM 20 information was contained in it and this is what was
21 done with it. So to the extent that some of that
22 information may allegedly be attorney-client privilege
23 materials that shouldn't be out in the public.

24 MR. PARZYCH: Judge, this is Greg Parzych.
09:26AM 25 Just thinking out loud as well, I don't think there's

1 any need for it to be filed. There's going to be an
2 Evidentiary Hearing. People are going to be testifying.
3 There's going to be a record made of that so I don't
4 think that any of the other stuff should be filed.

09:27AM

5 It should just be given to all of the
6 parties so we have an understanding of what we
7 anticipate at the Evidentiary Hearing.

8 THE COURT: Yeah, that's kind of my thought.
9 I think what I'd like you to do is just file a Notice of
10 Filing of disclosure statement, a combined disclosure
11 statement with the witnesses and exhibits just file a
12 notice so that the record is there.

09:27AM

13 I'd appreciate it if you would e-mail me a
14 copy of it and what I'll probably do after the hearing
15 is over is just file them under seal or have it marked
16 as an exhibit and file them in a sealed envelope or
17 something like that after I take a look at it. If I
18 think there's anything that sensitive in them, I can
19 always order them sealed but let's not file them
20 initially.

09:27AM

09:27AM

21 Let's just exchange them between counsel,
22 e-mail me a copy, I can take a look at them, and if I
23 think that it completes the record, then the file -- I
24 can then decide whether to file them, you know, just as
25 a regular document or exhibits or a pleading or file

09:28AM

1 them under seal.

2 MR. YURK: Your Honor, Russell Yurk, that
3 works for me.

4 MR. WILLIAMS: That's good for me, Judge.

09:28AM 5 THE COURT: Okay. Anything else that you
6 want to talk about today?

7 MR. WILLIAMS: I don't, Judge. Thank you.

8 MR. PARZYCH: Judge, I think the only thing
9 we would request is an expedited transcript and minute
09:28AM 10 entry of this proceeding.

11 THE COURT: I suspect that the court
12 reporter will want to talk to you and get the
13 information as to where to send the transcript and
14 things and I'll try to -- the Clerk of the Court has
09:28AM 15 been good about sending me a minute entry or a draft
16 minute entry so I'll get that turned around as quickly
17 as possible so you can include that with your request
18 for stay or petition.

19 I don't know how that's done anymore, but
09:29AM 20 you can put in your petition that I, you know, avow to
21 the court, even though you may not have a minute entry,
22 that I denied your request for a stay.

23 MR. PARZYCH: Thank you, Judge.

24 THE COURT: All right. You all have a good
09:29AM 25 weekend. Take care.

1 MR. YURK: Thank you, Your Honor.

2 MR. WILLIAMS: Thank you.

3 THE COURT: All right. Bye-bye.

4 (Whereupon, the proceedings were concluded.)

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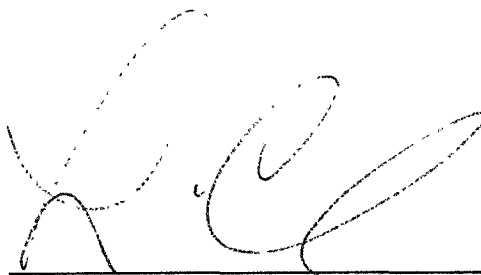
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C E R T I F I C A T E

STATE OF ARIZONA)
)
COUNTY OF YAVAPAI)

I, Lisa A. Chaney, a Certified Reporter, in the State of Arizona, do hereby certify that the proceedings had in the foregoing entitled matter are contained fully and accurately in the shorthand record made by me thereof, and that the following pages constitute a full, true and accurate transcript of the said shorthand record, all done to the best of my skill and ability.

DATED this 1st day of June, 2012.



LISA A. CHANEY, RPR, CSR, CR
Certified Reporter
Certificate No. 50801